

Applicant: Rudnick et al.  
Application Serial No.: 10/775,536  
Filing Date: February 10, 2004  
Docket No.: 760-84 CON 4 RCE  
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### REMARKS

On February 20, 2008, Applicants filed a timely response to the final rejection mailed December 26, 2007. In that response, Applicants argued that application of U.S. Patent No. 5,545,211 to An et al. (hereinafter "An") was improper as it has an effective date for citation purposes under 35 U.S.C. §102(e) of September 22, 1994, its U.S. filing date. Applicants further noted that the present application claims priority to a filing date of August 12, 1994, which is prior to the effective date of An. While the An reference has a Korean priority date which is earlier than the priority filing date of the present invention, it is the Applicants position that the Korean filing date is not controlling with respect to the citation of the reference under 35 U.S.C. §102(e).

In the Advisory Action mailed April 2, 2008, the Examiner indicated that the An reference is entitled to its foreign priority date and, therefore, is applicable as a reference against the present application. Upon receipt of the Advisory Action, undersigned counsel attempted to contact Examiner Schillinger to discuss the citation of the An reference. While undersigned counsel was unable to reach Examiner Schillinger, undersigned counsel left a voice message explaining the situation. In a return voice message received from Examiner Schillinger, she indicate that, in fact, the An reference is not applicable against the claims of the present invention. In that voice message, the Examiner suggested that the Applicant file a paper to that effect. This paper is being filed in accordance with the request of the Examiner.

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It is respectfully submitted that the An reference is not applicable against the claims of the present invention. Therefore, the rejection of claims 16-28, 30, 31, 33, 34 and 37, all based on An alone or An in combination with a secondary reference, is believed to be overcome. Moreover, having removed the rejection against these claims, these claims are believed to be allowable. Reconsideration is therefore respectfully requested.

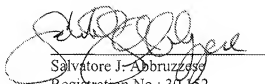
It is respectfully submitted that inasmuch as these arguments were submitted in a timely fashion in response to the final rejection, no fee for an extension of time is necessitated by this subsequent submission. However, if it is determined that the an extension of time is required, please consider this a constructive petition for an extension of time, and charge the appropriate fees to Deposit Account No. 08-2461.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if any, under 37 C.F.R § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

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Should the Examiner have any questions regarding this response, the undersigned would be pleased to address them by telephone.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Salvatore J. Abbruzzese', is written over a horizontal line.

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